

## NEW LEGAL CHALLENGES IN COMBATING SMOKING IN SERBIA AND REPUBLIKA SRPSKA

Dr. Stanka Stjepanović

**Abstract:** *The number of produced and sold tobacco products has been reduced in the USA in the past five years. Cigarette manufacturers are relocating their factories to countries in transition, which have “milder“ norms concerning smoking and the advertisement of tobacco products. With the implementation of legal norms, the state can influence the citizens’ behaviour, which can also be altered by introducing new acts, other than laws. By imposing tax on tobacco products, the state certainly obtains a considerable amount of money. On the other hand, the state allocates a large amount of money to health funds which are spent on treating patients from the effects of tobacco use. Thus a vicious circle is created, which the government cannot escape without a serious approach to the implementation of legal norms regarding smoking prohibition. There is an urgent need to introduce global legal standards on tobacco smoke. Forests are the lungs of the planet, and in some countries, such as Pakistan and Brazil, they are cut down in order to dry tobacco to such an extent that it poses a threat to entire humanity. The Law on protection of population from exposure to tobacco smoke has been passed recently, but it hasn’t yielded desired results yet. In this paper, which is based on research, the author indicates that smokers don’t regard the warnings printed on tobacco products as serious threats, but rather as part of cigarette pack design. Can the goal be reached, to protect people’s health, by enacting legal norms to ban smoking in certain premises? According to the author, the answer to this question is negative. Only the enactment of a fully binding norm by all UN member states could solve the issue of consistent protection of people from the exposure to harmful and life-threatening effects of tobacco smoke on a global level.*

**Key words:** *smoker, protection, health, threat, addiction*

### Introduction

On a press conference held on the 19th of June 2010, research team leader Jonathan Smith from John Hopkins University in Maryland published the results of a research conducted by twenty nine experts from fifteen countries on harmful effects of tobacco smoke on non-smokers. According to this report, the results indicate that the consequences to non-smokers are far more severe than the earlier research implied.

Tobacco is grown in 120 countries in the world. Its annual global production has reached 6 million tons. The world leader is China with over 1 million tons. According to the World Health Organization report, tobacco factories put around 4 trillion cigarettes on the market every year. Their sale revenue amounts to 100 billion dollars.

Five years ago, it was concluded in the US that society’s loss greatly exceeded the revenue generated from taxing tobacco products. For this reason, strict legal measures were imposed and the courts began to award millions in damages to smokers who became ill from their habit. Tobacco factories were sued and forced to pay damages.

Therefore the factories began to move further east, to countries in transition, such as Serbia.

The relocation of tobacco factories to other places does not permanently solve the problem of smokers' and non-smokers' poisoning with tobacco smoke.

If society wants to sanction its members' behaviour, claiming that it poses a threat not only to themselves but also to their surroundings, then it can do so by enacting laws whose sanctioning of the perpetrators would benefit both the individuals and the society. If the legislator truly intends to solve the problem, then it can do so by monitoring the implementation of the norm. However, the results of such implementation in practice depend on several factors. Is it sufficient to threaten with sanctions, if smoking is permitted in public places, or should other measures also be introduced? It is a complex issue which requires research among groups of tobacco consumers in order to receive a concrete answer. Since the Law on prohibition of smoking in public places was enforced in Republika Srpska, and the Law on protection of population from exposure to tobacco smoke has recently been adopted in Serbia, this paper will attempt to analyze all difficulties in their implementation.<sup>110</sup> What are the legislator's aims of enacting the norms to ban smoking and the advertisement of tobacco products?<sup>111</sup> Can this goal – to protect people's health – be reached by adopting legal norms on smoking ban in particular places?

This paper came as a result of research conducted among a group of smokers from 13-20 and 25-50 age groups. Both sexes were equally represented and they were from different educational levels – from primary school students to university graduates. The initial question was: when did they start smoking? The second question was: how were they affected by the alarming text printed on each cigarette pack they smoked? The third question was: what did they think about the norm which prohibits smoking in public places? Was it possible to buy tobacco freely in a supermarket, alongside bread and milk? Then why couldn't I consume it everywhere? Is the smoking ban considered an infringement of human rights and liberties or not? Who will benefit from frightening notes on cigarette packs? Legislators, smokers or tobacco industry? Isn't it, in inverted value system, the greatest commercial for tobacco products? In this paper we will try to prove that the answer to the last question is positive. In this case there is a clash between two human rights – the right to life and the right to health as opposed to the right to

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<sup>110</sup> The Law on prohibition of smoking tobacco products in public places – *Official Gazette of Republika Srpska no. 46 /2004*

<sup>111</sup> The Law on prohibition of advertizing tobacco products – *Official Gazette of Republika Srpska no.46/04*

consume the products which the state is selling and that can be legally purchased in every store, even in those where we regularly buy bread and milk.

### **The protection of people from exposure to tobacco smoke in Republika Srpska and in Serbia**

The legislation of Republika Srpska does not include many norms concerning non-smokers' protection. The law on prohibition of smoking tobacco products in public places states in its first act the aim to impose smoking ban in public places. The goal is to protect non-smokers and other risk groups from passive smoking. The law identifies minors, pregnant women and elderly people as risk groups. Non-smokers are thus legally protected from smokers, because smokers, by using their right to smoke, cause harm to non-smokers, poisoning them with the contents of their cigarettes. It can be argued that this legal act stems from the principle of sanctioning the violation of rights which was introduced to our legal system by Valtazar Bogišić in 1888, as part of the General Property Code in the principality of Montenegro.<sup>112</sup> But to what extent can a minor be protected from smokers, if the law protects him only in school and school yard?

The law defined public places as institutions which provide public services and where people are gathered. It gave examples of educational institutions, such as: nurseries, kindergartens, primary and secondary schools, faculties, universities and other educational institutions. What is regarded as an educational institution is left to further interpretation in each particular case. The institutions that provide accommodation and residence for pupils and students are deemed as public places where non-smokers should be protected. If a non-smoker finds himself within the premises of a healthcare centre or state, administrative, judicial and cultural institutions, he will be protected according to the law on smoking prohibition. The same rule applies to food institutions, public transport and workplaces. The law does not specify the term workplace, which means every workplace which non-smokers occupy. Finally, the Law states other public places and mentions banks, post offices and stores. With loose interpretation of Act 2 of the Law, it could be concluded that practically everything can be regarded as a public place, besides the house or apartment in which the minor lives with his parents, guardian or adopter.

The law has not managed to achieve such high goals of non-smokers' protection in its five-year application. We can still find stuffy rooms within universities, staff rooms and offices visited by students in order to register for an exam, pick up student cards, attend consultation meetings, examinations or seminar sessions. How educational can it be for a primary school student to see his teacher entering a special room to smoke a cigarette at each break? Isn't this a message to the student that it is prohibited to smoke only at certain places, but that everything that is banned can be practised elsewhere? How could someone, who cannot cope with his own smoking addiction, be a role model and protect children and young people? How can he teach them about the harmful effects of tobacco smoke to both smokers and non-smokers?

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<sup>112</sup> Act 1000 of the General Property Code of the principality of Montenegro: „You cannot use your right if it is detrimental to others or out of sheer boredom“.

We can conclude that the control of the implementation of the law failed completely. Monitoring of the application of the law should be conducted by health, education, sanitary, labour and safety inspectors. Communal and regular police are also obliged to control the application of this law.

Although it is employer's legal obligation to allocate a room for smoking, in such institutions the smokers are often allowed to walk freely with lit up cigarettes, thus leaving non-smokers to choke in their colleagues' or superiors' smoke, with the risk of being fired if they complain about it to their colleagues, on the grounds of disrupting the smokers' harmony.

Therefore the legal act on the protection of non-smokers from tobacco smoke didn't prove entirely effective in practice in Republika Srpska, as the protection of non-smokers wasn't maintained. Neither did they manage to send a strong signal to the smoking population that their behaviour would no longer be tolerated by the state; but rather that they were given a small space for poisoning their own bodies and that it aims to protect non-smokers in this way. It can be described as an attempt to protect the others from smokers and that the state intended to confine them in particular space, similar to any other infective disease. Without real intention to put it into effect, we can conclude that non-smokers are even more threatened now, especially children and youth.

When a legal norm is adopted in order to protect the consumers of a particular product from the product itself, then there is a logical question: why does the legislator, fully aware of the harmful effects of the product, make it available and closer to consumers?

Now we will show how the Law on prohibition of advertizing tobacco products protects the smokers from themselves.<sup>113</sup> The legislator's intention is stated in Act 1. In order to reduce the use of tobacco products and protect public health, it is prohibited to advertise tobacco products. Public health pertains to the entire population, smokers and non-smokers alike. All tobacco manufacturers are obliged to put a note that indicates the prohibition of advertizing on each cigarette pack. Such protection proved insufficient for smokers and it actually has a stimulative effect.

In conducted research, all surveyed smokers agreed that smoking was detrimental, but only 5% of them were fully informed about the extent of this threat. However, none of them were aware of the comparative study of smoking risks to health and life in relation to, for instance, traffic accidents.

Smoking can lead to death in case of lung cancer (the so-called smoker's cancer), chronic bronchitis and blood vessel diseases. Statistics from European countries reveal that in 90% of cases smoker's cancer leads to death, 75% in case of chronic bronchitis and 25% in case of heart and bloodstream diseases. Those who died as smokers shortened their lives for 15 years on average.<sup>114</sup> Most surveyed smokers tried to minimize the effects of tobacco use and its deadly outcome. One educated woman, a pedagogue, gave the example of her grandfather who turned 80, and whom she remembers holding a cigarette even in her earliest childhood. She said that she learned to smoke from him, because she admired him and started to imitate him from the 7th grade of primary school. The majority of smokers actually maintain that the risk to

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<sup>113</sup> The Law on the prohibition of advertising tobacco products – *Official Gazette of Republika Srpska* 46/04

<sup>114</sup> The risk factors of smokers [www.rvh.khv.ru/people/smoke/index4.htm](http://www.rvh.khv.ru/people/smoke/index4.htm) 28.12.2010

health and death is relative. They argue that death could befall us at any time in the street, if someone crashes into us with their car, that we could fall down in the bathroom and hit the tiles with our head. Compared to continental states, England has fewer traffic accidents, but nevertheless death rate from smoking is far greater. Smokers are prone to frequent infections of respiratory organs followed by strong morning cough. They spread tobacco stench through cigarette butts that remained in the ashtray overnight.

With each smoked cigarette, blood pressure increases as well as the number of heartbeats per minute, while peripheral arteries start to narrow. Blood clots occur frequently. All this leads to hypertension and heart and blood vessel diseases.

If all media regularly published the contents of tobacco smoke, stressing how poisonous it is and if teachers and professors, doctors and other people working in public institutions spoke of harmful effects of tobacco and acted accordingly, then we could say that a real fight against tobacco smoke was initiated, and for the health protection of the entire population.

On the one hand, we are developing ecological awareness of our planet's pollution, while on the other hand, one hectare of forest is burned somewhere in the world every minute in order to dry tobacco. Hundreds of thousands of finest paper material aren't used for pupils' notebooks, but end up on cigarette packs instead. Moreover, tobacco is destroying a non-renewable resource – arable land.

By imposing tax on tobacco, the state would secure a great amount of money for its budget, but at the same time an even greater sum goes to health funds for the treatment of those who became ill through the consumption of tobacco products. Forests are the lungs of our planet and they are ruthlessly destroyed in order to dry tobacco which will eventually poison smokers' lungs and non-smokers' respiratory organs.

Each year there is an increasing number of minors and even children who smoke. Girls, future mothers, start to become addicted to nicotine at the age of 13.

What message is sent to a child when he sees big supermarket racks and a huge, colourful cigarette tower above the cash register? How is he supposed to distinguish them from milk and sweets, if they are all equally placed?

Insincere intentions to protect people's health are evident from gigantic boxes with cigarette packs above shop assistants' heads. Since everyone has to pass through the cash register, they can't be missed. In this manner, smoking ban has turned into a great challenge to buy cigarettes and consume them.

In contrast to Republika Srpska, whose laws intend to protect non-smokers from smokers, the Law on protection of population from exposure to tobacco smoke<sup>115</sup> pertains to everyone. It doesn't make a distinction between smokers and non-smokers, but aims to protect the entire population from exposure to tobacco smoke. Legislator's intention was to maintain this protection by imposing restrictions on the use of tobacco products and by controlling the smoking ban implementation.

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<sup>115</sup> The Law on protection of population from exposure to tobacco smoke - *Official Gazette of Serbia no. 30/10*

The law makes a selection and for certain professions prohibits smoking even in specially designated rooms. It pertains to state administration, local government, health care, education, social responsibility towards children, social protection, culture, sport and recreation, production, control and distribution of medicines, production, storage and distribution of groceries, nutrition, but also media and space for public shooting and broadcast. Furthermore, smoking is banned at meetings and public gatherings.

The law seemingly intended to protect both the smokers from themselves and non-smokers from smokers, but detailed analysis of its acts showed that the protection was perfunctory and cosmetic, rather than genuine.

Although the smokers among teaching staff have been forced to leave school premises, they can still satisfy their nicotine addiction in the street, next to the school fence. Again, the same signal is sent to the students – you are allowed to smoke, just not on the school property. Many smokers are trying to convince themselves that tobacco is not an addiction, but merely a habit. How hard is it for a young human being to distinguish the prohibition to leave a classroom for a five-minute break with the smoking ban in a particular place, when he can see his teachers and administrative school workers inhaling cigarette smoke during each break. There couldn't be a better advertisement for tobacco products, so that a non-smoking onlooker considers lighting a cigarette after seeing groups of smokers in the streets and wonders whether such law was suggested by the tobacco industry, because it will benefit most from it.

We couldn't help noticing that with this norm, smokers moved from stuffy rooms to the streets; they are visible and can continue to pollute the environment on a regular basis.

Although the Law stated that smokers have the right to use health insurance in their attempt to quit smoking, thus comparing their addiction to alcoholism and drug addiction, it still failed to define smoking as drug addiction.

But nicotine addiction can only be called drug addiction. Nicotine is discharged very rapidly from the body, thus creating the urge to “feed” the organism with the new dose. Then the smoker quickly lights up another cigarette, poisoning himself and the environment.

When the law permits smoking in the premises with: beneficiaries of social care institutions for the accommodation of bed-ridden and nearly immobile persons, disabled people, mentally ill patients, people with developmental disorders; patients from specialized hospitals for treating psychiatric illnesses, patients from psychiatric wards and beneficiaries from the institutions and wards for palliative care, we can easily state that with this act the legislator gave a signal that in such cases smoking was regarded as a cure. Thus we come to the conclusion that certain legal acts, such as the quoted Act 9 of the Law, are discrepant with their names and do not protect the citizens from exposure to tobacco smoke. Bed-ridden patients who are unable to take care of

themselves, as well as the patients from psychiatric wards, reside in premises where smoking is allowed. Through such acts it can be concluded that there is no real intention to call the smoking of tobacco and other tobacco products by its true name – addiction, and to take all the necessary steps to cure tobacco addicts. Putting different stickers on cigarette packs, warning that smoking causes cancer and kills, is merely a decoration that smokers are getting used to. Only 10% of all surveyed smokers said that it bothered them when they saw the note on the cigarette pack for the first time, but later they accepted it as any other design. Remaining 90% didn't pay attention when they read the note for the first time. It poses a real challenge for young people: after reading how harmful it is, they are encouraged to try it. The European Commission launched a big anti-smoking campaign with incentives to each member state to decide whether to include images on cigarette packs as warnings of their harmful effect. David Byrne, European Commissioner for Health and Consumer Protection, said: "The true face of smoking is disease, death and horror, not the glamour and sophistication the pushers in the tobacco industry are trying to portray."<sup>116</sup>

### **A Proposition For The Protection From Tobacco Smoke On A Global Level**

As part of global fight against tobacco use, which violates the essential human right to life and the right to planet's survival, we propose that until the UN Declaration on complete ban of production and consumption of tobacco products is introduced, according to which all member states would be obliged to enact their laws, something should be done on a national level, by changing the existing legal acts.

We suggest that tobacco smoke be banned on a national level in all institutions, companies, vehicles, and not only reduced to public transport, streets, roads, sports and other cultural events. It should be banned in all restaurants, without allocating any smokers' room or special place.

We would also like:

To prevent public broadcast of TV shows and films in which actors are smoking.

To allocate an hour every day on each TV channel and radio station for the broadcast of materials which confirm the harmful effects of smoking.

To identify smoking as an addiction and to use all means to fight against it, as with other drug addictions.

To invite, through the media, all people who suffer from serious diseases due to smoking and to encourage them to take tobacco companies to court and force them to pay damages. Moreover, tobacco companies should be obliged to make annual

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<sup>116</sup> [www.bbc.co.uk/serbian/specials](http://www.bbc.co.uk/serbian/specials) 2.02.2011.

donations to insurance funds to pay damages to all those who became victims of tobacco use.

To considerably increase tax rates on tobacco products and limit their sale to specialized shops, at a ten times higher price than today.

Only if this comprehensive fight against nicotine addiction was implemented, it could be claimed that the legislator truly intended to protect the life and health of its citizens.

## Conclusion

In Republika Srpska 37% of population are smokers and according to the national coordinator for the control of tobacco in Republika Srpska, the existing legislation on smoking prohibition is insufficiently applied in practice. Moreover, the representative of the Institute for health protection stressed an alarming trend that the number of smokers had been increasing among children below 10 years of age since 2008.<sup>117</sup>

The consumption of tobacco smoke tied smokers, non-smokers, states, continents and the entire planet into the Gordian knot. The state allows the production of tobacco as a plant. The manufacturers sow it on the fields with the abundant use of various toxic pesticides. Then they reap it, dry the leaves in curing sheds spending great amount of wood in the process, as is the case in Brazil and Pakistan, or they spend great deal of gas and electrical energy instead. Afterwards they sell it to the factories for tobacco processing. And then the product enters the new circle, leading to death and disease.

According to Dr. Petar Borović from the Healthcare Institute „Milan Jovanović Batut“ in Belgrade, in the last few years tobacco industry has resorted to putting ammonium chloride into cigarettes, which increases the level of addiction among smokers and hampers their attempts to quit smoking<sup>118</sup>.

Putting different stickers on cigarette packs, with the warning that smoking causes cancer and kills, is just a decoration that the smokers are becoming used to. Only 10% of the surveyed smokers said that they were bothered when they first saw the note on the pack, but that they later accepted it as any other design. Remaining 90% did not pay attention when they first read the accompanying notes.

For youth it is a real challenge to try something that is considered to be so harmful. Therefore such warnings are a complete failure of the state and its attempt to protect people from exposure to tobacco smoke. As long as leading film stars smoke on the screen, students can see their teachers smoke outside school yards, and a variety of cigarette packs can be found above cash registers in supermarkets where bread and milk are regularly purchased, we cannot speak of a true fight for people's health. Only by increasing tax rates, licensing special stores for tobacco sale and imposing general smoking ban in all places can we reach a significant level of protection of smokers and non-smokers alike.

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<sup>117</sup> [www.rsplaneta.com](http://www.rsplaneta.com) 2.02.2011

<sup>118</sup> [www.blic.rs/vesti](http://www.blic.rs/vesti) 31.1.20011

The protection of people from exposure to tobacco smoke cannot be achieved with partial solutions, but with global measures and a global change in attitude towards tobacco products.<sup>119</sup>

In order to be regarded as a genuine fight for people's health, a sincere and comprehensive battle should be started against nicotine addiction of the citizens from each segment of society, and in this manner protect their greatest right to life and health.

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